

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

CYCLE-CRAFT CO., INC.  
d/b/a BOSTON HARLEY-  
DAVIDSON/BUELL,

Plaintiff,

v.

HARLEY-DAVIDSON MOTOR COMPANY,  
INC., and BUELL DISTRIBUTION  
COMPANY, LLC,

Defendant.

Civil Action No. 04 11402 NMG

**PLAINTIFF CYCLE-CRAFT'S PRETRIAL MEMORANDUM**

Pursuant to the Court's April 6, 2006 Procedural Order Re: Final Pretrial Conference/Trial, Plaintiff Cycle-Craft Co., Inc. d/b/a Boston Harley-Davidson/Buell ("Cycle-Craft") submits this Pretrial Memorandum.

**I. Exhibit List**

Cycle-Craft hereby submits its Exhibit List for the jury trial currently scheduled for May 22, 2006. Cycle-Craft submits its list of exhibits for this jury trial as a preliminary submission, and reserves its right to supplement and amend the list. Cycle-Craft further reserves the right to offer as evidence additional documents as needed for cross-examination, impeachment or rebuttal. Finally, Cycle-Craft reserves the right to introduce any exhibit appearing on Harley-Davidson Motor Company Inc. ("Harley-Davidson")'s exhibit list.

Cycle-Craft further states that it includes certain exhibits without waiver or limitation of its right to object to any exhibit, on grounds of authenticity, competency, relevancy, materiality, privilege, admissibility as evidence for any purpose, or any other ground.

In accordance, with the Court's Order, those exhibits to be introduced by without objection are identified by a single sequence of numbers and those exhibits for which Harley-Davidson has reserved the right to object have been identified by a single sequence of capital letters. Cycle-Craft has attempted to comply with the Court's directive to list exhibits in order of their anticipated introduction to the Court but reserves the right to alter that order of introduction.

**Objected to Exhibits**

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>	<b>Depo. Ex. No.</b>	<b>Bates Range(s)</b>	<b>Dated Offered</b>	<b>Dated Admitted</b>	<b>Offered Through Witness:</b>
A.	6/12/04	Video Recording of Cycle-Craft Facility	Atwood Declaration, Ex. 5				
B.	03/07/03	Letter from Gregory Holmes to Harry [Barry] Nichols re: Boston Harley Davidson	Plaintiff Summary Judgment Exhibit 33, Malicki 40	H-D 0979 – 0980			
C.	2000-2003	Cycle-Craft's Bar and Shield Scoresheets	Plaintiff Summary Judgment Exhibit 38	H-D 0532, 0557, 0582, 0607			
D.	07/14/99	Boston Globe article entitled "A Bumpy Ride to the Top Small Business Award Winners Take a Risk and Turn Contaminated Paint Factory Into a Roaring 'HOG' Dealership	Plaintiff Summary Judgment Exhibit 41-A				
E.	04/19/98	Boston Globe article entitled "Bank In Everett Is Branching Out"	Plaintiff Summary Judgment Exhibit 41-B				
F.	1997	Excerpt from Harley-Davidson, Inc.'s Annual Report	Plaintiff Summary Judgment Exhibit 41-C				

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>	<b>Depo. Ex. No.</b>	<b>Bates Range(s)</b>	<b>Dated Offered</b>	<b>Dated Admitted</b>	<b>Offered Through Witness:</b>
G.	07/31/00	Boston Herald article entitled "Biker Benefit Ride Raises Cash for Kids With Cancer"	Plaintiff Summary Judgment Exhibit 41-E				
H.	07/31/95	Boston Globe article entitled "Motorcyclists Take to the Road to Help Charity Fund-Raiser Benefits House for Children With Cancer"	Plaintiff Summary Judgment Exhibit 41-F				
I.	05/09/98	Boston Herald article entitled "High on Hog at Everett Harley Dealership"	Plaintiff Summary Judgment Exhibit 41-G				
J.	05/28/04	Everett Advocate article entitled "Harley-Davidson 'pitches-in' to Cal Ripken Buddy Ball"	Plaintiff Summary Judgment Exhibit 41-H				
K.	10/30/03	Press Release entitled "Boston H.O.G. Chapter Donates Check to American Cancer Society"	Plaintiff Summary Judgment Exhibit 41-I				
L.		Boston Harley-Davidson Vehicle Inventory for John Atwood's Motorcycles	Plaintiff Summary Judgment Exhibit 41-J				
M.	05/01/04	2004 Boston Harley-Davidson Mission Statement	Buchbaum 9	C-C 2093-96			
N.	03/20/02	Memo from Nichols to Holaday re: Atwood SRL/ ARO/S possibilities	Holaday 60	H-D 1501			
O.	12/05/00	Letter from Ostrom to Atwood re: specific VIN numbers	Holaday 61	H-D 1077-87			
P.	02/04/03	Letter from Nichols to Atwood re: Boston, MA Market Study	Malicki 39	H-D 0982-86			
Q.	Various Dates	Documentation and awards received by Cycle-Craft/Boston Harley for charitable contributions and good performance		C-C 00030-37, C-C 01959-2022, C-C 02143-72, C-C 02479-87			
R.	1990	1990 Annual Report of Harley-Davidson, Inc.					
S.	1991	1991 Annual Report of Harley-Davidson, Inc.					
T.	1996	1996 Annual Report of Harley-Davidson, Inc.					
U.	1997	1997 Annual Report of Harley-Davidson, Inc.					
V.	2002	2002 Annual Report of Harley-Davidson, Inc.					
W.	2003	2003 Annual Report of Harley-Davidson, Inc.					

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>	<b>Depo. Ex. No.</b>	<b>Bates Range(s)</b>	<b>Dated Offered</b>	<b>Dated Admitted</b>	<b>Offered Through Witness:</b>
X.	07/23/03	Bills of Sale from the sales of motorcycles to Florida residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 16, Lunsford 7, Stevens 3	C-C 00698, 00729, 00827, 00682, 00901, 00747, 00867, 00784, 00771, 00641, 00626, 00802, 00854, 00669, 00894, 00836, 00596, 00608, 00713			
Y.	07/25/03	Sales and Warranty Registration forms ("SWRs") from the sales of motorcycles to Florida residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 17, Lunsford 16, Stevens 2	C-C 00590, 00610, 00629, 00651, 00662, 006884, 00696, 00721, 00732, 00749, 00773, 00788, 00807, 00817, 00835, 00853, 00872, 00893, 00903			
Z.	07/28/03	Copies of driver's licenses from the sales of motorcycles to Florida residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 18, Lunsford 8, Stevens 6				
AA.	Various dates	Copies of the Bills of Sales from the sales of motorcycles to New Hampshire residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 22, Christensen 3	C-C 00457, 00508, 00527, 00440, 00544, 00557, 00490, 00465			
BB.	Various dates	Copies of the Certificates of Origins from the sales of motorcycles to New Hampshire residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 23, Christensen 4	C-C 00459, 00455, 00511, 00506, 00520, 00525, 00434, 00436, 00543, 00538, 00555, 00564, 00491, 00486, 00467, 00471			
CC.	Various dates	Copies of driver's licenses from the sales of motorcycles to New Hampshire residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 25, Christensen 6	C-C 00522, 00507, 00442, 00545, 00558, 00492, 00466			
DD.	July 2003	Dealer file for Joe Giordano	Buchbaum Declaration Exhibit 1				
EE.	July 2003	Dealer file for Charles Potts	Buchbaum Declaration Exhibit 2				

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>	<b>Depo. Ex. No.</b>	<b>Bates Range(s)</b>	<b>Dated Offered</b>	<b>Dated Admitted</b>	<b>Offered Through Witness:</b>
FF.	10/01/03	Employee Warning Notice issued to Jason Marasca	Buchbaum 14	C-C 02453			
GG.	02/11/04	Employee Warning Notice issued to Jason Marasca	Buchbaum 15	C-C 02454			
HH.	04/08/04	Employee Warning Notice issued to Jason Marasca	Buchbaum 16	C-C 02455			
II.		Positive Customer Testimonials		C-C 00001-15			
JJ.	12/22/04	Opinion issued by the Court of Appeals of Wisconsin. Racine Harley-Davidson, Inc. v. State of Wisconsin, Division of Hearings and Appeals, Harley-Davidson Motor Company, Inc. (278 Wis.2d 508, 692 N.W.2d 670))					
KK.		Massachusetts General Laws Part I, Title XV, Chapter 93B. Regulation of Business Practices Between Motor Vehicle Manufacturers Distributors and Dealers					
LL.		Harley-Davidson Dealer Market Areas by Zip Base Map.	Holaday 59	H-D 1788			
MM.	05/03/04	E-mail from Contois to Buchbaum re: Five Year Business Plan	Malicki 46	H-D 0978			
NN.	05/90	Study entitled "Analysis and Recommendations Concerning Export Sales" compiled by the Fontana Group, Inc.	Plaintiff Summary Judgment Exhibit 5, Flickinger 3	H-D 1572 - 1588			
OO.	05/21/92	Harley-Davidson Non-Retail Policy/P & A Allocation Meeting Minutes	Plaintiff Summary Judgment Exhibit 6, Flickinger 8	H-D 1606 - 1608			
PP.	04/18/91	Memorandum from Cimermanic to Harley-Davison employees re: "Non-Retail" Sales	Flickinger 5	H-D 1592-95			
QQ.	02/93	Letter from Fink to Harley-Davidson dealers re: Non-Retail Sales	Flickinger 10	H-D 1615-23			
RR.	03/18/04	Memorandum from Flickinger to Harley-Davidson dealers re: Sales of New Motorcycles in E-Commerce w/2004 Model Year Non-Retail Policy attached	Flickinger 12A	H-D 20013-15			
SS.	05/14/04	Letter to William Berkowitz from Gregory Holmes	Verduyn 26				
TT.	12/13/02	E-mail from Bill Holaday to Mike Malicki, Gene Ostrom, CC to Barry Nichols and Joe Marcolina re: Boston Market Study	Plaintiff Summary Judgment Exhibit 34, Malicki 38	H-D 1805 - 1806			

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>	<b>Depo. Ex. No.</b>	<b>Bates Range(s)</b>	<b>Dated Offered</b>	<b>Dated Admitted</b>	<b>Offered Through Witness:</b>
UU.	04/25/02	Correspondence to Gene Ostrom from Brian Kelly re: possible Beverly-Danvers locations	Ostrom 64	H-D 20291-94			
VV.	04/09/02	B&L Client Advisory	Ostrom 65	H-D 2094.1			
WW	06/20/02	Letter from Brian Kelly to Mike Malicki re: Beverly-Danvers market area	Ostrom 66	H-D 20295			
XX.	08/30/04	Letter from Brian Kelly to Mr. Evers re: possible Danvers location	Ostrom 67	H-D 20296-97			
YY.	01/11/05	Letter from Thomas Wyand, North End Harley-Davidson, Inc., to Mike Malicki, Harley-Davidson Motor Company	Plaintiff Summary Judgment Exhibit 13	H-D 11001 - 11002			
ZZ.	07/28/03	E-mail from Steve Verduyn to Mike Malicki and Al Contois re: SWR report needed	Plaintiff Summary Judgment Exhibit 35, Verduyn 14	H-D 1852 – 1853			
AAA	07/30/03	E-mail to Tony Gray and Kathy Henson from Steve Verduyn re: 1864 (Boston HD) financial statement	Verduyn 15	H-D 1854			
BBB	02/02/04	E-mail to Al Contois from Steve Verduyn re: Boston HD audit/Non-Retail Sales	Verduyn 21	H-D 1910			
CCC	04/27/04	Termination letter to Tina Hargis re: Boston Harley-Davidson	Verduyn 77	H-D 31010-11			
DDD	09/19/03	Letter from Flickinger re: Bay City, MI investigation	Verduyn 78	H-D 31008-09			
EEE	09/19/03	Letter from Flickinger re: Bob Schultz dealer Investigation	Verduyn 79	H-D 31006-07			
FFF.	01/14/04	Letter from Flickinger re: Schofield, WI investigation	Verduyn 80	H-D 31003-05			
GGC	10/16/03	Termination letter from Jon Flickinger to Santa Fe Harley-Davidson	Verduyn 81	H-D 31000-02			
HHH	03/01/04	Letter to Bruns indicating intent to audit dealership.	Verduyn 82	H-D 20526-30			
III.		Invoices from Harley-Davidson to McCasland Motorcycles	Verduyn 83	H-D 20458-61			
JJJ.	Various Dates	Collection of audit letters sent from Harley-Davidson, Inc. to various dealers	Verduyn 84				
KKK	Various Dates	Series of letters sent from Harley-Davidson, Inc. to various dealers	Verduyn 87				
LLL.	02/13/04	Letter from Malicki to McTamney of Liberty Harley-Davidson		H-D 10615-16			
MMI	04/02/04	Letter from Malicki to McTamney of Liberty Harley-Davidson		H-D 10617-20			

<b>Trial Ex. No.</b>	<b>Date</b>	<b>Description</b>	<b>Depo. Ex. No.</b>	<b>Bates Range(s)</b>	<b>Dated Offered</b>	<b>Dated Admitted</b>	<b>Offered Through Witness:</b>
NNN	10/30/02	E-mail from Verduyn to Oppermann re: Suspect non-retail letter needed, dealer 0230		H-D 41746			
OOO	10/31/02	Letter from Hutchinson to Scott of Harley-Davidson Fullerton, Inc.		H-D 41744-45			
PPP	05/27/03	Letter from Hutchinson to Scott of Harley-Davidson Fullerton, Inc.		H-D 41749-51			
QQQ	12/12/02	Letter from Hutchinson to Tom of Downtown Harley-Davidson		H-D 42138-39			
RRR	02/05/03	Letter from Hutchinson to Tom of Downtown Harley-Davidson		H-D 42338-42			
SSS	03/31/03	Letter from Hutchinson to Tom of Downtown Harley-Davidson		H-D 42343			
TTT	10/11/02	Letter from Heichelbech to Rhoten of Dodge City Harley-Davidson		H-D 41434-35			
UUU	12/06/02	Letter from Heichelbech to Rhoten of Dodge City Harley-Davidson		H-D 41427-28			

**Unopposed Exhibits**

1.	09/19/00	Harley-Davidson Motorcycle Dealer Contract for Cycle-Craft Co., Inc. d/b/a Boston Harley-Davidson/Buell	Plaintiff Summary Judgment Exhibit 1, Atwood 1	H-D 0001, 0001.1, 0002, 0002.1, and 0035			
2.	06/14/02	Harley-Davidson Motorcycle Dealer Contract Extension for Cycle-Craft Co., Inc. d/b/a Boston Harley-Davidson/Buell	Plaintiff Summary Judgment Exhibit, 1 Atwood 1A	H-D 0006			
3.	01/99	Harley-Davidson General Conditions of Sale and Service	Plaintiff Summary Judgment Exhibit 2	H-D 0007 - 0032			
4.	04/20/04	Letter from Jon Flickinger to John Atwood re: Inspection of Records	Plaintiff Summary Judgment Exhibit 14, Verduyn 24	H-D 0085 - 0087			
5. 4/20/04	04/20/04	Letter from Jon Flickinger to John Atwood re: Notice of Dealer Contract Termination	Plaintiff Summary Judgment Exhibit 26, Verduyn 25	H-D 0088 – 0093			
6.	07/28/03	Copies of cashier's checks from the sales of motorcycles to Florida residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 20, Lunsford 4, Stevens 5	C-C 00822, 00679, 00902, 00861, 00666, 00838, 00890, 00716, 00593, 00871, 00627, 00607, 00733, 00748, 00785, 00772, 00647, 00697, 00804			
7.	Various dates	Copies of cashier's checks from the sales of motorcycles to New Hampshire residents at issue in this dispute	Plaintiff Summary Judgment Exhibit 24, Christensen 5	C-C BATES CUT-OFF, C-C 00507, 00524, 00437, 00540, 00562, 00485, 00472			
8.	02/21/05	Defendants' Supplemental Answers to Interrogatories	Plaintiff Summary Judgment Exhibit 36				
9.	08/12/03	E-mail from Mike Malicki to Al Contois and Steve Verduyn re: Lee Custom Cycle	Plaintiff Summary Judgment Exhibit 37, Verduyn 17	H-D 1855 – 1856			
10.	07/20/90	1991 Model Pricing and Non-Retail Sales Policy	Flickinger 4	H-D 1589-90			



10A.	1991-2004	Harley-Davidson's Non-Retail Sales Policies for the 1991-2004 Model Years	Plaintiff Summary Judgment Exhibit 3, Flickinger 11	H-D 1624-1640, H-D 0987-0988			
11.	02/13/04	E-mail to Al Contois and Mike Malicki from Steve Verduyn w/audit notice attached for Boston Harley-Davidson	Verduyn 22	H-D 1911-12			

## II. **Witness Lists**

### A. **Live Witnesses**

Cycle-Craft hereby submits its Witness List for the jury trial currently scheduled for May 22, 2006. Cycle-Craft reserves its right to supplement and amend this list. Cycle-Craft has not listed such additional witnesses as may be required solely for document authentication, or who may be needed for rebuttal purposes. This witness list is based on the assumption that Harley-Davidson is not willing to voluntarily produce Harley-Davidson employee witnesses for examination during Cycle-Craft's case in chief. Finally, Cycle-Craft reserves the right to call any witness that appears on Harley-Davidson's witness list, and to offer additional testimony by deposition or trial transcript.

In alphabetical order, the witnesses that Cycle-Craft expects to present at trial as part of its case in chief are as follows:

John Atwood (Fact Witness)  
361 Charles Street  
Reading, MA 01867

Michael Bloom (Fact Witness)  
4 Pocahontas Drive  
West Peabody, MA 01960

Laura Breeden (Fact Witness)  
C/o Bingham McCutchen  
150 Federal Street  
Boston, MA 02110

Ronald Buchbaum (Fact Witness)  
No. 7 Cape Ann Circle  
Ipswich, MA 01938

Al Contois (Fact Witness)  
9 Chestnut Way  
Stratham, NH 03885

Cycle-Craft Recordkeeper (Fact Witness)  
1760 Revere Beach Pkwy Rte. 16  
Everett, MA 02149

Steve DeOssie (Fact Witness)  
C/o Cycle-Craft  
1760 Revere Beach Pkwy Rte. 16  
Everett, MA 02149

Claud Jinks (Fact Witness)  
Dynamic Dealer Strategies  
6504 Turnberry Lane SE  
Olympia, WA 98501

Jennifer Kent (Fact Witness)  
C/o Bingham McCutchen  
150 Federal Street  
Boston, MA 02110

Jamie McGrath (Fact Witness)  
62 Clifton Avenue  
Saugus, MA, 01906

Kenneth McPhee (Fact Witness)  
19 Temple Drive  
Methuen, MA 01844

**B. Witnesses Appearing by Deposition<sup>1</sup>**

Listed below are Plaintiff Cycle-Craft's initial designations of the pertinent portions of the testimony Cycle-Craft expects to present at trial by means of deposition. This testimony is expected to be presented by transcript and/or by video playback. Cycle-Craft reserves the right to supplement or amend these designations. In addition, inclusion of testimony is not an concession of its admissibility. Cycle-Craft also expects that it may be necessary to designate additional portions of testimony from these, or other, witnesses after it has reviewed any witness lists and/or designations of testimony proposed by Harley-Davidson.

---

<sup>1</sup> The Parties are in the process of negotiating their respective objections and counter-designations to deposition testimony.

Diane Bolden	
PAGE REFERENCE	LINE NUMBERS
10	19-25
11	1-18
13	6-25
14	1-4
22	2-5
27	23-25
28	1-6
31	5-10
33	10-22
40	16-25
41	1-25
42	1-11
48	7-25
49	1-25
50	1-5
52	11-25
53	1-23
55	16-23
57	16-25
58	1-2
58	17-25
59	15-25
60	1-2
66	6-20

Jon Flickinger April 5, 2005	
PAGE REFERENCE	LINE NUMBERS
98	16-25
99	1-18
102	3-21
118	5-25
119	1-23

Jon Flickinger May 27, 2005

<b>PAGE REFERENCE</b>	<b>LINE NUMBERS</b>
60	10-15
64	4-25
65	1-14
68	1-20
107	24-25
108	1-25
109	1-25
110	1-25
111	1-10

William Holaday

<b>PAGE REFERENCE</b>	<b>LINE NUMBERS</b>
49	10-21
50	21-25
51	1-24
61	10-22

Michael Malicki

<b>PAGE REFERENCE</b>	<b>LINE NUMBERS</b>
143	13-25
144	10-22
146	15-25
98	2-25
99	1-25
100	1-4
103	21-25
104	1-25
105	1-7
113	5-25
114	1-13
125	19-25
126	1-25
127	1-25
128	1-20

Barry Nichols	
PAGE REFERENCE	LINE NUMBERS
45	22-25
46	11-19
63	15-25
64	1
71	23-25
72	1-5, 9-14

Gene Ostrom	
PAGE REFERENCE	LINE NUMBERS
77	11-25
78	1-5

Steven Verduyn April 6, 2005	
PAGE REFERENCE	LINE NUMBERS
43	12-25
44	1-25
45	1-25
46	1-17
48	2-9
51	2-17, 25
52	1-25
53	1-25
54	1-25
55	1-23
56	5-25
57	1-16
58	5-17
59	9-25
60	1-13
75	7-25
76	1-25

Steven Verduyn April 6, 2005	
PAGE REFERENCE	LINE NUMBERS
88	16-25
89	1-25
90	1-25
91	1-25
92	1-18
100	1-25
101	1-17
107	10-22
117	15-21
127	25
128	1-22
146	1-25
147	1-25
148	1-25
149	1-25
150	1-25
151	1-25
152	1-25
153	1-25
154	1-25
155	1-25
156	1-25
157	1-25
158	1-25
159	1-25
160	1-25
181	1-25
183	1-25
184	1-12
185	2-8

Steven Verduyn May 26, 2005	
PAGE REFERENCE	LINE NUMBERS
273	2-6
282	2-25
283	1-23
325	2-25
326	1-22

Respectfully submitted,

CYCLE-CRAFT CO., INC.

By its attorneys,

/s/ James C. Rehnquist  
 James C. Rehnquist (BBO# 552602)  
 Samantha L. Schreiber (BBO# 640058)  
 Christopher C. Nee (BBO# 651472)  
 GOODWIN PROCTER LLP  
 Exchange Place  
 Boston, MA 02109  
 (617) 570-1000

Dated: May 05, 2006

**CERTIFICATE OF SERVICE**

I certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 5, 2006.

LIBA/1696555.1

/s/ Christopher C. Nee